



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0935]

RIN 1625-AA00, 1625-AA11, and 1625-AA87

Regulated Navigation Areas and Limited Access Areas; Waterway Management of Apra Harbor, Guam

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising and consolidating existing regulated navigation areas, security zones and safety zones currently in place in Apra Harbor, Guam. This action will replace existing redundant, potentially confusing and outdated navigation regulations with a cogent regulatory framework in order to better meet the needs of the community and help ensure the safe and efficient use of the harbor.

DATES: This rule is effective on February 10, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0935. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line

associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Kristina Gauthier, U.S. Coast Guard Sector Guam at (671) 355-4866, email Kristina.M.Gauthier@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826 or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

An Advance Notice of Public Rule Making (ANPRM) on this action to revise and consolidate the existing regulated navigation areas, security zones and safety zones in and around Apra Harbor, Guam was published on January 10, 2014 and two public meetings were held on January 22, 2014. Three comments were received during the comment period. Subsequently, after consideration of all comments, a Notice of Proposed Rule Making (NPRM) on this action was published on September 19, 2014. The closing date for

comments regarding the NPRM was November 3, 2014. No new comments were received. No subsequent public meetings were requested or held.

B. Basis and Purpose

The legal basis for this rulemaking is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 160.5; and Department of Homeland Security Delegation No. 0170.1.

The purpose of the rulemaking is to revise and consolidate the existing regulated navigation areas, security zones and safety zones in and around Apra Harbor, Guam. Navigational regulations of Apra Harbor have been in place in various forms dating back to the era of U.S. Navy administration of Guam. Some of the regulations predate the promulgation of the Ports and Waterways Safety Act of 1972, were initially included in 33 CFR parts 127 and 128, and were subsequently re-codified in 33 CFR part 165 on July 8, 1982 as part of a regulatory reorganization effort. The regulations in part 165 were subsequently amended in 1986, 1990, 1996, 1998 and 2003. Between 1972 and 2003 four Regulated Navigation Areas, three security zones and two safety zones were created and/or amended. One of the security zones was subsequently removed, another changed to a safety zone, and an

additional safety zone created. The following details this history:

Apra Harbor, Guam safety zone regulations in 33 CFR 165.1401 were last amended in 1990 (55 FR 18725, May 4, 1990). These zones were established as security zones in 1972 (37 FR 10800, 31 May 1972) amended in 1975 (40 FR 1016, January 6, 1975), codified in 33 CFR 127.1401(a) and (b) in 1982 as part of a regulatory reorganization effort (47 FR 29569, 29667, July 8, 1982), and were subsequently disestablished and re-established as safety zones in 1990 (55 FR 18725, May 4, 1990).

Apra Outer Harbor, Guam regulated navigation area regulations in 33 CFR 165.1402 were established by 33 CFR part 165 (47 FR 29660, July 8, 1982), and amended in 1996 (61 FR 33669, June 28, 1996), and subsequently again in 1998 (63 FR 35533, June 30, 1998).

Apra Harbor Security Zone in 33 CFR 165.1404 was promulgated in 1990 (55 FR 18725, May 4, 1990).

Other Regulated Navigation Areas and Security Zone regulations in 33 CFR 165.1405 regarding Designated Escorted Vessels-Philippine Sea and Apra Harbor Guam (including Cabras Island Channel) were established in 2003 (68 FR 4384, January 29, 2003).

Currently there are four Regulated Navigation Areas (RNA), one security zone and two safety zones within and approaching Apra

Harbor. These regulations, included in 33 CFR 165.1401, 1402, 1404 and 1405, while intended to improve the safety and security of Apra Harbor and the mariners operating therein, are potentially confusing, overlapping, and do not adequately address current needs. The purpose of this rulemaking is to simplify the current regulations, taking into account relevant safety and security navigational requirements for the waters of Apra Harbor, including approaches to the Harbor. This rulemaking creates a regulatory scheme that ensures the needs of all stakeholders are addressed in a concise, understandable format through consolidation of the regulated navigation areas and rationalization of limited access areas (safety or security zones).

C. Discussion of Comments, Changes, and the Final Rule

No comments regarding the Notice of Proposed Rule Making were received. The regulatory text of the Final Rule is the same as the regulatory text of the Notice of Proposed Rule Making without change.

By this rulemaking, the Coast Guard is:

- Revising 33 CFR 165.1401 by:
 - o Removing the safety zone around Wharf H as the wharf is no longer used for explosives cargo handling on a regular basis.
 - o Removing Wharf H terminology in the special regulation paragraph, as it no longer applies.
 - o Expanding and re-designating the safety zone around

Naval Wharf Kilo as Safety Zones A and B, to address the increasing volumes of explosive cargoes handled by the wharf, while assuring operational flexibility to maritime operators under varying cargo load conditions and their explosive arcs. The activation and enforcement of Safety Zone A will be visually indicated by a red (BRAVO) flag and a "SAFETY ZONE A" sign displayed at Naval Wharf Kilo. The activation and enforcement of Safety Zone B will be visually indicated by a red (BRAVO) flag and a "SAFETY ZONE B" sign displayed at Naval Wharf Kilo.

- Removing 33 CFR 165.1402 because:
 - o The Regulated Navigation Area (RNA) designated in paragraph (a) is redundant and less precise than a subsequent RNA addressing the area, 33 CFR 165.1405(a)(1) and (2), that was made effective January 29, 2003 (68 FR 4384, Jan. 29, 2003).

- o The existing § 165.1402(b) regulations are outdated, concurrently addressed by Coast Guard anchorage regulation 33 CFR 110.238, and local government harbor regulations.

- Amending 33 CFR 165.1405 by:
 - o Removing the words "(including Cabras Island Channel)" from the section heading,
 - o Removing paragraph (a)(4) because Cabras Island Channel is already encompassed by paragraph (a)(2), Apra Harbor.
 - o Revising paragraph (a)(2) by replacing a reference to "Apra Harbor" with "Apra Outer Harbor." This is appropriate

because the current regulation is redundant in addressing the waters of Apra Inner Harbor that are restricted by existing U.S. Army Corps of Engineers regulation 33 CFR 334.1430.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rulemaking will not adversely impact the economy or a segment of the economy in Guam, interfere with another agency, alter any entitlements, grants, user fees, or loans, or raise a novel or controversial question of law or policy. This rulemaking will streamline the current regulations in place, actually decreasing the burden on waterway users. Further, although the intention is to expand the safety zones around Naval Wharf Kilo, traffic will be permitted to pass through the zones with the permission of the Captain of the Port. In

fact, providing two safety zones will limit the burden on the mariner, allowing a closer approach to Naval Wharf Kilo under certain conditions.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is intended to streamline the current regulations in place, actually decreasing the burden on certain small entities and waterway users.

3. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have

implications for federalism.

5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the consolidation and rationalization of existing Apra Harbor navigation regulations. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165---REGULATED NAVIGATION AREAS AND LIMITED ACCRESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306,

3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.1401 to read as follows:

§165.1401 Apra Harbor, Guam—safety zones.

(a) Location. (1) The following is designated Safety Zone A: The waters of Apra Outer Harbor encompassed within an arc of 1,000 yards radius centered at the center of Naval Wharf Kilo, located at 13 degrees 26'44.5" N and 144 degrees 37'50.7" E. (Based on World Geodetic System 1984 Datum).

(2) The following is designated Safety Zone B: The waters of Apra Outer Harbor encompassed within an arc of 1,400 yards radius centered at the center of Naval Wharf Kilo, located at 13 degrees 26'44.5" N and 144 degrees 37'50.7" E. (Based on World Geodetic System 1984 Datum).

(b) Special regulations. (1) Safety Zone A, described in paragraph (a) of this section, will only be enforced when Naval Wharf Kilo, or a vessel berthed at Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night, accompanied by a "SAFETY ZONE A" sign.

(2) Safety Zone B, described in paragraph (a) of this section, will only be enforced when Naval Wharf Kilo, or a vessel berthed at Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night, accompanied by a "SAFETY ZONE B"

sign.

(3) Under general regulations in § 165.23, entry into the zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Guam.

§165.1402 [Removed]

3. Remove § 165.1402.

4. In § 165.1405, revise the section heading and paragraph (a)(2) and remove paragraph (a)(4) to read as follows:

§ 165.1405 Regulated Navigation Areas and Security Zones:

Designated Escorted Vessels-Philippine Sea and Apra Harbor Guam, and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands (CNMI).

(a) * * *

(2) Apra Outer Harbor, Guam - All waters from surface to bottom of Apra Outer Harbor, Guam, shoreward of the COLREGS Demarcation line as described in 33 CFR part 80.

* * * * *

Dated: December 19, 2014.

C. B. Thomas,

Rear Admiral, U.S. Coast Guard,

Commander, Fourteenth Coast Guard District.

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